July 1, 2013

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Technology Transition Task Force*, GN Docket No. 13-5; *AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition*, GN Docket No. 12-353; *Petition for Declaratory Ruling That tw telecom has the Right to Direct IP-to-IP Interconnection*, WC Docket No. 11-119; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *USTelecom Petition for Non-Dominant Treatment of Switched Voice Services*, WC Docket No. 13-3; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; WC Docket No. 10-90; *Application of Verizon to Discontinue Domestic Telecommunications Services*, WC Docket No. 13-150

Dear Ms. Dortch:

This brief letter is being written in response to a recent notice of an *ex parte* meeting filed on behalf of Cablevision Systems Corporation and Charter Communications, Inc.[1] In that *ex parte* letter, the cable companies assert without elaboration or substantiation that "ILECs remain the dominant providers of fixed voice services in all or virtually all markets in the country…"[2]

USTelecom has explained at length in its *Petition for Declaratory Ruling* the myriad reasons why such a statement could not be further from the truth.[3] USTelecom submits this *ex parte* letter to address two discreet points arising from the *Cablevision Ex Parte Letter*.

First, USTelecom reiterates that the concept of a separate market for "fixed" voice services that excludes wireless voice services is simply not economically defensible. As the most recent figures on "cord cutting" from the Center for Disease Control reinforce, a

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1 *See, Ex parte* Letter from Samuel L. Feder, Jenner & Block, WC Docket No. 12-353, *et seq.* (May 8, 2013) (*Cablevision Ex Parte Letter*).

2 *Id.* at 1.

3 *See, e.g., Petition of USTelecom for Declaratory Ruling that Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3 (filed Dec. 19, 2012).

constantly growing number of households – *now approximately 40%* – have chosen not to subscribe to a wireline voice service and instead rely solely on wireless for their home voice service.[4] Whether or not one calls that a "fixed" service is frankly beside the point because consumers themselves have decided that wireless voice adequately replaces their previous demand for a wired voice service – or, in the case of the majority of younger Americans, have *never* bothered to purchase a wireline phone because they consider wireless a preferable alternative for voice service. In fact, well over half of adults ages 18-35 live in households with only wireless telephones.[5]

There is simply no debate that cable and wireless voice services compete head on with wireline mass market voice services. As the Commission itself has recently acknowledged, wireless service revenues have increased while traditional switched access voice service revenues have decreased, "*in part due to substitution of wireless services for wireline services*."[6] In that same *Order*, the Commission emphasized that "wireline, wireless, and cable companies compete with each other for customers."[7] Yet by limiting the market definition only to those Americans who continue to subscribe to a wireline voice service, Cablevision treats those consumers who have chosen to rely upon wireless rather than wireline for their residential voice service as if they no longer exist once they "cut-the-cord" – they are simply eliminated from the market as if they had never purchased or considered purchasing a wireline service! The irrationality of such an approach is underscored by the fact that if 99% of households switched to wireless-only, ILECs would still be treated as dominant if they retained the majority of the remaining 1%. Such a conclusion is, needless to say, economically indefensible, as well as fundamentally inconsistent with the Commission's repeated acknowledgements that "wireless, wireline, and cable companies compete with each other for customers."[8]

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[4] Center for Disease Control Report, *Wireless Substitution: Early Release from the National Health Interview Survey*, *July-December 2012* (June, 2013) (available at: http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201306.pdf) (*CDC Wireless Substitution Report*). CDC's recently released report found that during the July to September, 2012 time frame, 38.2% of American households were "wireless only." A straight-line extension of the consistent growth rate shown over time by the CDC reports would result in an estimated 40.1% of "wireless-only" households by the end of 2012, and approximately 42% by mid-year 2013. This estimate is also consistent with the results of a recent Citigroup survey taken in the 3rd Quarter of 2012 finding that 41.6% of occupied U.S. households had "cut-the-cord." Citi Research*, 3Q12: Quarterly Distribution Wrap; Pay TV Contracts, Data Growth Decelerates, Wireless Substitution Continues*, p. 7 (rel. Dec. 7, 2012).

[5] *CDC Wireless Substitution Report* at 2. The CDC reported the following wireless-only rates by age groups: 53.2% for 18-24 year olds; 62.1% for 25-29 year olds; and 56.7% for 30-34 year olds.

[6] *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, MD Docket No. 13-140, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 13-74, ¶11 (May 23, 2013) (*Regulatory Fees NPRM*) (emphasis added).

[7] *Regulatory Fees NPRM* at ¶18.

[8] *Id. See also, Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, FCC 11-161, para. 9 (rel. Nov. 18, 2011) ("And the system is eroding rapidly as consumers increasingly shift from traditional telephone service to substitutes including Voice over Internet Protocol (VoIP), wireless, texting and email…").

Second, even ignoring the reality of wireless "cord cutting," Cablevision's assertion concerning ILEC dominance in the market for voice services is belied by its own statements to Wall Street, not to mention the Commission's own data. In Cablevision's most recent quarterly financial report, for the first quarter of 2013, Cablevision states that it *provides voice service to 45.8 percent of locations passed by its network*.[9] In fact, the Commission's most recent *Local Competition Report* indicates that in Cablevision's home state of New York, *competitive local exchange providers (CLECs) including cable companies have the majority of both business and residential wireline voice subscribers.*[10]

In contrast, an analysis of the Commission's own data shows that ILECs provide switched voice service to less than one-third of the homes passed by their traditional wireline networks nationwide.[11] Since 2000, nationwide ILEC switched access lines have fallen by more than two-thirds – with residential switched access lines falling 13.6% between mid-2011 and mid-2012 alone.[12] Indeed, AT&T has recently demonstrated that in the 22 states in which it operates as an ILEC, only 21% of households subscribe to an ILEC switched access service – a drop of 73 percent since 1999.[13] Such trends are fundamentally inconsistent with "market power," particularly in light of the market success of cable companies such as trumpeted by Cablevision.

The inconsistency in Cablevision's argument is further highlighted by comparing ILEC voice market shares with cable's market shares in broadband and video. Cablevision's quarterly financial report goes on to proudly explain that the company *provides broadband service to 55.8 percent of homes passed by its network*[14] and that *57.9% of the homes passed by its network*

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9 Cablevision Press Release, *Cablevision Systems Corporation Reports First Quarter 2013 Results*, at p. 8 (May 9, 2013) ("Cablevision First Quarter 2013 Results"), available at http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTg1MDk5fENoaWxkSUQ9LTF8VHlwZT0z&t=1. Typically, cable company networks are capable of serving all, or nearly all, households within their franchise footprints. Further, as the Commission has stated, more than 85% of American households have a cable broadband connection available to them. *Eighth Broadband Progress Report, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*, 27 FCC Rcd. 10342, FCC 12-90, para. 60 (Aug. 21, 2012).

10 *Local Telephone Competition: Status as of June 30, 2012*, Federal Communications Commission, Wireline Competition Bureau, Tables 10 and 11 (June 2013) (*Local Competition Report*) (reporting that non-ILECs have 51% of residential wired voice lines and 53% of business wired voice lines in New York State).

11 USTelecom's analysis found that for year-end 2012, approximately 32% of households nationwide subscribed to an ILEC switched access service. That figure is projected to drop to close to 25% by year-end 2013. USTelecom Analysis available at http://www.ustelecom.org/blog/americans-continued-drop-landlines-2012] reaffirm USTelecom's projected household share losses [http://www.ustelecom.org/news/research-briefs/ustelecom-research-brief-april-4-2013.

12 *See, FCC Local Competition Report*. Even if ILEC VoIP lines are included, the number of ILEC access lines has fallen by well over half since 2000.

13 Reply Comments of AT&T, GN Docket No. 12-353, at Attachment A (Feb. 25, 2013).

14 *Cablevision First Quarter 2013 Results* at p. 8.

subscribe to its video service[15] – a service for which the Commission recently granted the cable industry significant regulatory relief.[16] So, in short, Cablevision asserts that the Commission should regulate incumbent LECs as dominant providers of voice services despite the fact that in the vast majority of geographic areas of the country ILECs have a smaller share of the voice market than cable providers do of either the video or broadband markets – and in many cases even the voice market itself – while nonetheless insisting that they have no market power in either of those latter two markets. Such arguments simply do not withstand logical scrutiny.

Please include this filing in the dockets identified above.

Sincerely,

Glenn T. Reynolds

c: Sean Lev
Jonathan Chambers
Julie Veach
Deena Shetler
Lisa Gelb
Bill Dever
Patrick Halley
Tim Stelzig
Melissa Droller Kirkel
Marcus Maher
Wes Platt
Eric Ralph
Steve Rosenberg
Henning Schulzrinne
John Visclosky
Steve Wildman
Gene Fullano
Rebekah Goodheart
David Grimaldi
Nick Degani
Priscilla Delgado Argeris
Alex Hoehn-Saric

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15 *Id.* It should be noted that this video market share is not limited to "wireline" video services but rather includes households that subscribe to "wireless" DBS video services.

16 *Revision of the Commission's Program Access Rules*, MB Docket No. 12-68, Report and Order and Further Notice of Proposed Rulemaking, FCC Rcd. 12605 (Oct. 5, 2012).